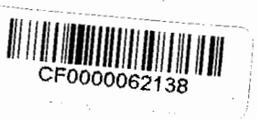
Accused-In Custl



(2)

समक्षः माननीय मध्यप्रदेश उच्च न्यायालय, जबलपुर

क्रिमिनल अपील क्र0:-----2302-----/९९

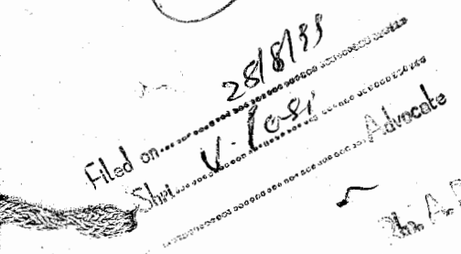
(१) माड़वी पण्डरू पुत्र पाकल उम्र लगभग २४ वर्ष,

(२) माड़वी बोमड़ा पुत्र माड़वी मुड़ो उम्र लगभग २५ वर्ष

दोनों निवासी-ग्राम हुमाम, सरपंच पारा, थाना दन्तेवाड़ा, जिला दन्तेवाड़ा(म0प्र0) ----------अपीलार्थीगण

(In Jail)

अभियुक्तगण



बनाम

मध्यप्रदेश शासन द्वारा पुलिस थाना दन्तेवाड़ा, जिला दन्तेवाड़ा(म0प्र0) ----------अभियोजन

क्रिमिनल अपील अन्तर्गत धारा ३७४(२) दण्ड प्रक्रिया संहिता

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..A.A.-2302/99 **सन्** **200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH -:

HON'BLE MR. L.C. BHADOO, Ag. C.J. &
HON'BLE MR. SUNIL KUMAR SINHA, J.

11.01.2007

Shri G.S. Agrawal, Sr. Advocate along with Shri K.R. Nair, Counsel for the appellants.

Shri Ravindra Agrawal, Panel Lawyer for the State.

Heard.

Oral judgment dictated on *Dais.*

As per L.C. Bhadoo, Ag. Chief Justice;

This appeal is directed against the judgment of conviction and order of sentence dated 5/7/1999 passed by the 2nd Additional Sessions Judge, Jagdalpur in Sessions Trial No.180/1998, whereby, the 2nd Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Section 302 of the IPC, sentenced each of them to undergo imprisonment for life and to pay a fine of Rs.1,000/- , in default of payment of fine to further undergo R.I. for 6 months.

The case of the prosecution, in brief, is that PW-1 – Madvi Kosa gave a merg intimation (Ex.-P/2) to the effect that yesterday i.e. on 17/3/1998 at about 7 p.m., accused – Madvi Bomda, Madvi Pandru and deceased – Madvi Kosa consumed liquor, when they were in a stage of intoxication, they started quarrelling and in

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मामला क्रमांक ...Cr.A.-2302/99/सन् **200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that process, deceased – Madvi Kosa slapped accused – Madvi Pandru, on which, he & Madvi Bomda became angry and attacked the deceased with an axe, as a result of which, Madvi Kosa died on the spot. Based on this merg intimation, the Station House Officer, Dantewada, District – Bastar, registered the First Information Report (Ex.-P/1) for commission of offence under Section 302 read with Section 34 of IPC, left for scene of occurrence and prepared inquest (Ex.-P/3) on the body of the deceased. While in the police custody, accused – Madvi Pandru gave memorandum (Ex.-P/27), in pursuance of that he got recovered the weapon of offence i.e. axe from the house of co-accused -Madvi Bomda. The body of deceased -Madvi Kosa was sent for postmortem examination to the Primary Health Centre, Dantewada, where Dr. B.K. Tirkey conducted the postmortem, prepared postmortem report (Ex.-P/8), in which, he opined that the cause of death was coma due to head injury, which was antemortem in nature and death was homicidal.

After completion of the investigation, the charge sheet was filed against the accused persons in the Court of Chief Judicial Magistrate, Dantewada, who in turn committed the case to the Sessions Judge, Bastar, Jagdalpur, from where the 2nd Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused persons examined 5 witnesses. The statements of the

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मामला क्रमांक C.A - 2302/99 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 3 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused persons were recorded under Section 313 Cr.P.C., in which, they denied the material appearing against them in the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime in question.

We have heard Shri G.S. Agrawal, Sr. Advocate with Shri K.R. Nair, Counsel for the appellants and Shri Ravindra Agrawal, Panel Lawyer for the State.

Shri Agrawal has not disputed the homicidal death of deceased-Madvi Kosa. Apart from that, from the evidence of Dr. B.K. Tirkey (PW-4), it is established that the death of Madvi Kosa was homicidal in nature.

As far as involvement of the accused/appellants in crime in question is concerned, the whole case rests upon the circumstantial evidence i.e. extra judicial confession made by accused persons before PW-1 – Madvi Kosa, who stated in his evidence that Madvi Pandru & Madvi Bomda came to his house and confessed before him that they have committed the murder of Madvi Kosa (deceased) by assaulting him with an axe. Thereafter, on receiving this information, he informed the son of deceased, they went to the spot and saw the dead body of deceased. In the cross-examination, this witness has admitted that Madvi Pandru and Madvi Bomda came to his house in an intoxicated stage and disclosed that when three of them were consuming liquor, deceased – Madvi Kosa slapped Madvi Pandru, on which they

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मामला क्रमांक ....Cr.A-2302/99 **सन्** **200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 4 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

assaulted him with an axe and committed his murder. In order to place reliance on the evidence of this witness that whether the accused persons made extra judicial confession before this witness or not, it is to be seen that whether the extra judicial confession made by the accused persons was voluntary, true and prompt. In order to establish this principle, it has come in the evidence that immediately after the offence was committed; both the accused persons went to this witness and disclosed him about the incident.

In the cross-examination of this witness, the defence has not been able to elicit any circumstance, which shows that this witness was interested or related to the deceased or this witness has any animosity against these appellants, therefore, there is no reason to disbelieve the evidence of this witness by this Court, as the evidence of this witness inspired confidence of this Court. Therefore, the involvement of the accused in committing the crime in question is established beyond reasonable doubt.

Shri Agrawal submits that evidence of this witness – Madvi Kosa and First Information Report itself disclose the fact that at the time of commission of crime, accused persons and deceased consumed liquor, when they were in the stage of intoxication, some altercation took place between them and deceased slapped Madvi Pandru, on which, Mandvi Pandru and Mandvi Bomda assaulted the deceased with an axe, as a result of which, Madvi Kosa died on the spot.

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मामला क्रमांक ....CA-2304/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 5 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Having considered the facts and circumstances of the case and having regard to the fact that till the accused persons and deceased consumed liquor, they were in friendly terms and after intoxication, some altercation took place and deceased slapped Madvi Pandru, on which, accused persons without any premeditation, in a heat of passion, assaulted the deceased, therefore, the case of the present appellants is squarely covered under Exception IV to Section 300 of IPC, as such, the offence against them does not travel beyond Section 304-Part II of IPC.

In the result, the appeal partly succeeds.

The conviction and sentence imposed upon the accused persons under Section 302 of IPC are hereby set aside and instead thereof, they are convicted under Section 304 Part-II of IPC and each of them is sentenced to undergo R.I. for 9 years. It is stated that accused persons are in detention since 19/3/1998 till date; therefore, the accused persons are entitled for set off the detention period against the sentence imposed upon them.

Certified copy as per rules.

Sd/-
Ag. Chief Justice

Sd/-
Sunil Kumar Sinha
Judge

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